

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JUAN JOSE CAMPOS,

Petitioner,

v.

MONTGOMERY, Warden,

Respondent.

Case No. CV 13-09012 DSF (AN)

MEMORANDUM AND ORDER
DISMISSING HABEAS PETITION

I. INTRODUCTION

On December 6, 2013, Juan Jose Campos ("Petitioner"), a state prisoner proceeding *pro se*, filed his pending petition for a writ of habeas corpus by a person in state custody pursuant to 28 U.S.C. § 2254 ("Petition"). For the reasons discussed below, this action is dismissed without prejudice because the sole claim in the Petition is unexhausted.

II. DISCUSSION

A. Habeas Rule 4

"A discrete set of Rules governs federal habeas proceedings launched by state prisoners." *See* Rules Governing Section 2254 Cases in the United States District Courts, 28 foll. U.S.C. § 2254 ("Habeas Rules"); *Mayle v. Felix*, 545 U.S. 644, 654, 125 S. Ct. 2566 (2005). Rule 4 of the Habeas Rules requires a district court to dismiss a petition

1 without ordering a responsive pleading where the face of the petition shows the petitioner
2 is not entitled to relief in district court. *Felix*, 545 U.S. at 656. Local Rule 72-3.2 of this
3 Court also authorizes a magistrate judge to prepare a proposed order for summary
4 dismissal and a proposed judgment for the district judge's consideration where, as here,
5 it plainly appears from the face of the petition that petitioner is not entitled to relief.

6 **B. The Federal Exhaustion Doctrine**

7 Under 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death
8 Penalty Act of 1996 ("AEDPA"), 110 Stat. 1214, "[a]n application for a writ of habeas
9 corpus on behalf of a person in custody pursuant to the judgment of a State court shall not
10 be granted unless it appears that . . . the applicant has exhausted the remedies available
11 in the courts of the State[.]" 28 U.S.C. § 2254(b)(1)(A). The purpose of AEDPA's
12 exhaustion requirement is to give the state the opportunity to pass upon and correct
13 alleged violations of its own prisoners' federal rights. *See Baldwin v. Reese*, 541 U.S. 27,
14 29, 124 S. Ct. 1347 (2004). To provide that opportunity, a prisoner "must 'fairly present'
15 his claim in each appropriate state court (including a state supreme court with powers of
16 discretionary review), thereby alerting that court to the federal nature of the claim." *Id.*

17 Here, the pending Petition raises a single claim of ineffective assistance of counsel
18 ("IAC"). (Pet. at 5; attached pages at 7-12.) Petitioner concedes he did not appeal his
19 judgment of conviction, and there is no record of any state habeas petitions having been
20 filed challenging his conviction. (Pet. at 2-3; state court records.^{1/}) Consequently, the
21 Court finds Petitioner's pending IAC claim is unexhausted because the state courts, and
22 most importantly the California Supreme Court, have not had the opportunity to pass upon
23 it. § 2254(b)(1)(A); *Baldwin*, 541 U.S. at 29.

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25
26 ^{1/} The Court takes judicial notice of Internet records relating to this action in the
27 state appellate courts (available at <http://appellatecases.courtinfo.ca.gov>) ("state court
28 records"). *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002) (federal courts may
take judicial notice of related state court documents), *overruled on other grounds as*
recognized in Cross v. Sisto, 676 F.3d 1172 (9th Cir. 2012).

1 Moreover, Petitioner's unsupported assertion that he is "currently exhausting" his
2 IAC claim in a newly-filed habeas petition in the California Supreme Court (Pet. at 5, 8)
3 still renders his Petition unexhausted. Because state courts "should have the first
4 opportunity to examine the lawfulness of a state prisoner's confinement," *Batchelor v.*
5 *Cupp*, 693 F.2d 859, 862 (9th Cir. 1982), the exhaustion doctrine also extends to
6 situations where the prisoner has a post-conviction challenge to his conviction still
7 pending in the state courts. *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *see*
8 *also Schnepf v. Oregon*, 333 F.2d 288, 288 (9th Cir. 1964). This is because "[i]f the
9 prisoner's claim is meritorious, and if the state remedy is prompt and complete, there is
10 no need to bring post-conviction proceedings in federal courts." *Sherwood*, 716 F.2d at
11 633 (internal quotation marks and citation omitted). Thus, to the extent Petitioner is
12 correct that he has a habeas petition raising his IAC claim pending before the California
13 Supreme Court, his Petition before this Court is an unexhausted petition. *Id.* at 633-34;
14 *Schnepf*, 333 F.2d at 288.

15 Finally, Petitioner's accompanying motion for a stay [2] is denied. While district
16 courts have the discretion in limited circumstances to hold a mixed or fully exhausted
17 petition in abeyance pending the exhaustion of unexhausted claims, *Rhines v. Weber*, 544
18 U.S. 269, 273-79, 125 S. Ct. 1528 (2005), *Kelly v. Small*, 315 F.3d 1063, 1066-71 (9th
19 Cir. 2003), *King v. Ryan*, 564 F.3d 1133, 1138-41 (9th Cir. 2009), a district court is
20 "obliged to dismiss immediately" when the petition contains no exhausted claims. *Jiminez*
21 *v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001) (citation omitted); *see also Raspberry v. Garcia*,
22 448 F.3d 1150, 1154 (9th Cir. 2006) ("Once a district court determines that a habeas
23 petition contains only unexhausted claims, . . . it may simply dismiss the habeas petition
24 for failure to exhaust."). Petitioner, having presented a fully unexhausted Petition, is not
25 entitled to a stay of this action because it must be dismissed. *Coleman v. Thompson*, 501
26 U.S. 722, 731, 111 S. Ct. 2546 (1991) ("a state prisoner's federal habeas petition should
27 be dismissed if the prisoner has not exhausted available state remedies")
28

1 **III. CONCLUSION**

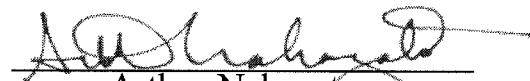
2 For the reasons discussed above, the reference to the Magistrate Judge is vacated
3 and the Petition is dismissed without prejudice.

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6 DATED: December 20, 2013

7 DALE S. FISCHER
8 UNITED STATES DISTRICT JUDGE

9 Presented by:

10
11 
12 Arthur Nakazato
United States Magistrate Judge